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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HP TUNERS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

KENNETH CANNATA,

Defendant.

Case No. 3:18-cv-00527-LRH-CSD

JOINT PRETRIAL ORDER

Pursuant to the parties' Joint Discovery Plan and Scheduling Order (ECF Nos. 16 and 17), Fed. R. Civ. P. 26(a)(3), Local Rule 26-1(b)(5) and (6), and the Court's Minute Order entered on February 25, 2022 (ECF No. 159), Plaintiff HP Tuners, LLC ("HP Tuners" or "Plaintiff") and Defendant Kenneth Cannata ("Cannata" or "Defendant") (together, the "Parties"), by and through their respective counsel, hereby submit the Joint Pretrial Order. This Joint Pretrial Order is timely filed.

1 Trial counsel for the parties are:

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15 **For Defendant Kenneth Cannata:**

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22 After pretrial proceedings in this case,

23 IT IS ORDERED:

24 **I. NATURE OF THE ACTION**

25 This is an action brought by Plaintiff HPT against Defendant Cannata for: (i) breach of
26 fiduciary duty; (ii) fraud; (iii) violation of the Computer Fraud and Abuse Act (“CFAA”) arising
27 under 18 U.S.C. §1030; (iv) violation of the Defend Trade Secrets Act (“DTSA”), 18 U.S.C. §1836
et seq.; (v) violation of the Copyright Act (“DMCA”) arising under 17 U.S.C. § 1201(a)(1)(A);
(vi) misappropriation of trade secrets arising under the Nevada Uniform Trade Secrets Act, NRS
Chapter 600A; (vii) violation of the Illinois Trade Secrets Act, 765 ILCS 1065/1 et. seq.; (viii)
unfair competition under the Nevada Deceptive Trade Practices Act, NRS 598; (ix) unfair
competition under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS

1 505/1 et. seq.; (x) breach of contract; (xi) tortious interference with prospective economic relations;
2 and (xii) conversion. (ECF No. 1, ¶8).

3 In December 2003, Keith Prociuk (“Prociuk”) and Chris Piasri (“Piasri”) joined with
4 Cannata to form HPT as its Members, with each contributing intellectual property consisting
5 primarily of computer hardware and software they intended to use for automotive tuning. (ECF
6 No. 1, at ¶¶ 13, 16-28; ECF No. 1-1, at 2-3, 11-12). Prociuk, Piasri, and Cannata adopted a
7 written operating agreement for HPT on March 25, 2004 in which they defined the intellectual
8 property contributed to HPT as the “Technology.” (ECF No. 1-1, at §4.1). HPT asserts it owns
9 improvements and derivative works based on the Members’ original intellectual property
10 contributions, defined in the Operating Agreement as “Additional Technology.” (*Id.*, at §4.2).

11 In March 2008, Prociuk, Piasri, and Cannata executed a Buy Sell Agreement (amended
12 July 20, 2015). (ECF No. 1-3). The Buy Sell Agreement prescribed different methods for
13 calculating the purchase price of an HPT member’s interest under different circumstances,
14 including that if a member was terminated for cause, the purchase price for his interest would be
15 one-third of the book value of the company.

16 In or around late 2015, Cannata, Prociuk and Piasri engaged in discussions regarding the
17 purchase Cannata’s 1/3 membership interest in HPT but were unable to reach an agreement.
18 Shortly thereafter, Cannata engaged in communications with Kevin Sykes-Bonnett (“Sykes-
19 Bonnett”) and John Martinson (“Martinson”), the principals of Syked ECU Tuning Incorporated
20 (“Syked”). Without the knowledge of Prociuk or Piasri, Cannata executed a Non-Disclosure
21 Agreement with “Syked Tuning Software LLC”. Thereafter, Cannata transferred a flash drive
22 containing certain HPT files and other files and information of HPT to Sykes-Bonnett, including
23 its “key generator” tool (with its algorithm, application, and source code).

24 On October 20, 2016, the HPT Members executed a Membership Interest Purchase
25 Agreement (the “Purchase Agreement”), pursuant to which Cannata agreed to accept \$6.46 million
26 for the sale of his membership interest in HPT and \$340,000 for his interest in an entity that owned
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1 the property where HPT was located. (ECF No. 1-2; Cannata Tr., ECF No. 112, at 191-205, 213-
2 219). The Purchase Agreement defined “Proprietary Information” (ECF No. 1-2, at §1.1) and
3 generally required Cannata to deliver and destroy, and not to disclose HPT’s Proprietary
4 Information. (ECF No. 1-2, at §6.3). The Purchase Agreement further required Cannata, for a
5 period of 18 months, not to compete with HPT. (*Id.*, at §6.4).

6 The relief sought by Plaintiff includes: an award of damages in excess of \$6,800,000.00
7 for Defendant’s breaches of contract and fiduciary duties, and for fraud; an award of damages for
8 tortious interference with prospective economic relations, for unfair competition, and conversion;
9 compensatory damages; exemplary damages for Defendant’s willful misappropriation; statutory
10 damages pursuant to NRS 598 (Nevada) and 815 ILCS 505/1 (Illinois) for unfair competition; an
11 accounting, disgorgement of Defendant’s profits and/or statutory damages for Defendant’s
12 misappropriation of confidential and proprietary trade secrets pursuant to 18 U.S.C. §1030
13 (CFAA), 18 U.S.C. §1836 et seq. (DTSA), NRS Chapter 600A (Nevada), and 765 ILCS 1065/1 et
14 seq. (Illinois); enjoining Defendant from using misappropriated trade secrets pursuant to statute; a
15 declaratory judgment that Defendant’s conduct was a violation of 18 U.S.C. 1030 (a)(4) (CFAA),
16 and damages pursuant to same; enjoining Defendant from accessing Plaintiff HPT’s computers;
17 preliminary and permanent injunctive relief as to Defendant’s access of Plaintiff’s confidential
18 information, to order the return of Plaintiff’s property, to enjoin the use, access, and/or distribution,
19 and order the return of HPT’s key generator program and tool, enjoin any release of source code,
20 enjoin Defendant’s sale of any competitive software of products, or any sale or release to third
21 parties of products using HPT’s proprietary code, or derived from HPT’s software or products, to
22 enjoin any and all activities in which Defendant designs or creates any software or products which
23 use, rely upon, or disclose HPT’s proprietary or trade secret information; prejudgment and post-
24 judgment interest; and, statutory costs and expenses, including reasonable attorneys’ fees.

25 Defendant Cannata has denied many of the material allegations of the Complaint.

26 On February 24, 2022, the Court granted summary judgment: in favor of Plaintiff HPT for
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its Tenth Cause of Action for breach of contract (but not as to damages); in favor of Defendant Cannata as to the Third Cause of Action brought under the Computer Fraud and Abuse Act (CFAA); and reserved judgment on the parties' motions for summary judgment as to Plaintiff's First Cause of Action for breach of fiduciary duty, with a ruling pending after additional briefing. (Dkt. 157, at 24-25).

II. STATEMENT OF JURISDICTION/VENUE

This Court has subject matter jurisdiction for the CFAA, DTSA and DMCA claims pursuant to 28 U.S.C. §1331. This Court has supplemental jurisdiction for the state law claims pursuant to 28 U.S.C. §1367. Complaint (Docket No. 1) ¶11; Answer (Docket No. 45) ¶11.

Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) in that Defendant is a resident of the state in which the district is located and a substantial part of the events or omissions giving rise the claims asserted in the Complaint occurred in this Judicial District. Complaint (Docket No. 1) ¶12; Answer (Docket No. 45) ¶12.

III. ADMITTED FACTS

The following facts are admitted by the parties and require no proof:

1. In December 2003, Prociuk, Piastri and Cannata formed HPT, with each contributing intellectual property consisting primarily of computer hardware and software designed for automotive tuning.
2. HPT adopted a written operating agreement on March 25, 2004.
3. The Operating Agreement appointed Cannata as the President, CFO, and Secretary of HPT.
4. Plaintiff HPT designs and manufactures computer hardware and software for tuning and calibrating engines and transmissions in automobiles, trucks, ATVs, snowmobiles, and other vehicles.
5. HPT sells interfaces such as the MPVI, which connects to the onboard computer of vehicles and, with the HPT software allows for vehicle tuning.
6. HPT sells credits as its license mechanism for customers to use for vehicle tuning, and

1 the credits are sold and distributed by means of “application keys”.

2 7. HPT’s application keys are generated by the “key generator”.

3 8. Section 4.1 of the Operating Agreement provides as follows:

4 4.1 **Intellectual Property.** In exchange for his membership interests,
5 each member has contributed and assigned to the Company the
6 intellectual property described on Exhibit A (“Technology”). Each
7 member hereby agrees to assist the Company in any reasonable manner to
8 obtain for the Company's benefit legal protection for the Technology and
9 will execute, when requested, any lawful documents deemed necessary
10 by the Company to carry out the purposes of the Technology assignment.
Each member will further assist the Company in every way to enforce its
rights in the Technology, testifying in any suit or proceeding involving
any of the Technology or by executing any documents deemed necessary
by the Company.

11 9. Section 4.2 of the Operating Agreement provides as follows:

12 4.2 **Additional Technology.** Each Member also grants the Company all
13 of his rights, titles and interest in and to improvements, enhancements,
14 derivative works to the Technology.

15 10. In March 2008, Cannata, Prociuk, and Piastri entered into a Buy Sell Agreement that
16 provided, among other things, ways to calculate the purchase price of a member’s
17 interest in HPT in various instances, such as a voluntary member withdrawal, the death
18 of a member, or the termination of a member for cause.

19 11. In 2014, Defendant Cannata became aware of Sykes-Bonnett.

20 12. HPT’s Buy Sell Agreement was amended on July 20, 2015.

21 13. In or around late 2015, Cannata, Prociuk and Piastri engaged in discussions regarding
22 the purchase Cannata’s 1/3 membership interest in HPT.

23 14. Soon thereafter, Cannata engaged in communications with Sykes-Bonnett and
24 Martinson, the principals of Syked.

25 15. Without the knowledge of Prociuk or Piastri, Cannata executed a Non-Disclosure
26 Agreement with Syked Tuning Software, LLC.

27 16. Thereafter, Cannata transferred a flash drive containing certain HPT files and other

- 1 files and information of HPT to Sykes-Bonnett, including its “key generator” tool (with
2 its algorithm, application, and source code).
- 3 17. Prior to October 20, 2016, Cannata also shared various source code files,
4 communication protocol documents and an administrative version of HPT’s VCM
5 Suite 2.23 with Sykes-Bonnett.
- 6 18. Prior to October 20, 2016, Prociuk and Piastri were unaware Cannata had shared certain
7 HPT source code files, HPT’s “key generator, communication protocol documents”,
8 and an administrative version of HPT’s VCM Suite 2.23 with Sykes-Bonnett.
- 9 19. On or about October 20, 2016, Cannata executed the Membership Interest Purchase
10 Agreement (the “Purchase Agreement”), agreeing to accept \$6,460,000 for the sale of
11 his membership interest in HPT
- 12 20. Cannata received an additional \$340,000 for the sale of his interest in the entity that
13 owned the real property where HPT’s offices were located.
- 14 21. The Purchase Agreement, defined “Proprietary Information” as “all confidential and
15 proprietary information of the Company.”
- 16 22. The Purchase Agreement required Cannata to “deliver to HPT the software, hardware,
17 firmware, source codes, designs, schematics and other such information” in his
18 possession, and also to “destroy any and all copies of Proprietary Information” in his
19 possession.
- 20 23. Cannata retained possession of certain HPT source code files and information of HPT
21 after execution of the Purchase Agreement.
- 22 24. The Purchase Agreement required Cannata to keep HPT’s “Proprietary Information”
23 confidential and not to disclose it.
- 24 25. The Purchase Agreement prohibited Cannata from competing, directly or indirectly,
25 with HPT for a period of 18 months.
- 26 26. Cannata disclosed certain HPT source code files and information to Sykes-Bonnett
27 after the execution of the Purchase Agreement.

1 27. Cannata communicated with Sykes-Bonnett and Martinson within 18 months after the
2 execution of the Purchase Agreement regarding the development of a hardware product
3 intended for use with automotive tuning software developed by Sykes-Bonnett and
4 Martinson.

5 28. Cannata did not disclose to Prociuk or Piasri prior to executing the Purchase
6 Agreement on or about October 20, 2016 that he had previously shared certain HPT
7 source code files, the HPT “key generator”, or an administrative version of the VCM
8 Suite 2.23 software with Sykes-Bonnett.

9 29. Cannata did not disclose to Prociuk or Piasri that his wife obtained an ownership
10 interest in Syked within 90 days after the execution of the Purchase Agreement.

11 30. Section 12 of the Buy-Sell Agreement entitled “Termination of Services” provides as
12 follows:

13 Notwithstanding any other provision in this Agreement, in the event a
14 Member’s services with the LLC is terminated for “Cause” (which is
15 defined to mean any act that is materially injurious to the LLC or intended
16 to benefit the Member at the expense of the LLC), then the remaining
17 Members and the LLC shall have the purchase rights set forth in Section 6.1
except that the valuation on which the LLC and/or the Remaining Members
shall purchase the terminated Member’s interest shall be no more than the
lesser of book value or the value set forth in Section 5.4 of this Agreement.

18 **IV. FACTS NOT ADMITTED BUT WILL NOT BE CONTESTED BY EVIDENCE**

19 The following facts, though not admitted, will not be contested at trial by evidence to the
20 contrary:

21 None.

22 **V. ISSUES OF FACT TO BE TRIED**

23 The following are issues of fact to be tried and determined at trial:

- 24 1. Damages as to all of Plaintiff HPT’s claims for relief (except for Plaintiff’s Third Cause
25 of Action claiming violation of the CFAA, as to which summary judgment has been
26 granted in favor of Defendant Cannata).

1 **A. First Claim for Relief – Breach of Fiduciary Duty¹**

2 2. Whether Defendant Cannata breached his fiduciary duty that he owed to Plaintiff.

3 3. Whether Defendant Cannata’s breach of fiduciary duty owed from Cannata to Plaintiff
4 proximately caused damages.

5 **B. Second Claim for Relief – Fraud**

6 4. Whether Defendant Cannata concealed material fact(s) from Plaintiff under
7 circumstances that created a duty to speak.

8 5. Whether Defendant Cannata intended to induce false beliefs of Plaintiff by his alleged
9 concealment of material fact(s).

10 6. Whether Plaintiff could not have discovered the truth of material fact(s) concealed by
11 Defendant Cannata through its own reasonable inquiry or inspection, or whether
12 Plaintiff was prevented from discovering said truth.

13 7. Whether Plaintiff justifiably relied upon Defendant Cannata’s alleged silence as a
14 representation that concealed material fact(s) did not exist.

15 8. Whether information allegedly concealed from Plaintiff by Defendant Cannata was
16 such that Plaintiff HPT would have acted differently had it known the concealed fact(s).

17 9. Did Plaintiff HPT’s reliance on not knowing material fact(s) allegedly concealed by
18 Defendant Cannata, if any, result in damages to Plaintiff.

19 **C. Fourth Claim for Relief – Violation of the Defend Trade Secrets Act, 18 U.S.C. §1836,**
20 ***et seq.* (“DTSA”)**

21 10. Whether Plaintiff HPT possessed valuable trade secret(s), as “trade secret(s)” are
22 defined by 18 U.S.C. § 1839.

23 11. Whether Plaintiff HPT can establish the existence of any trade secret.

24 12. Whether Defendant Cannata misappropriated Plaintiff’s trade secrets, if any, through
25 unlawful acquisition, use, or disclosure, pursuant to the definitions of 18 U.S.C. §1839.

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¹ The Court’s determination as to summary judgment on this claim for relief is pending.

1 13. Whether Defendant Cannata's alleged misappropriation of Plaintiff's trade secrets, if
2 any, was in breach of an express or implied contractual obligation of Cannata's under
3 a duty not to disclose same.

4 **D. Fifth Claim for Relief – Violation of the Copyright Act, 17 U.S.C. §1201(A)(1)(a)**

5 14. Whether Plaintiff HPT was the copyright owner of works.

6 15. Whether Defendant Cannata decrypted any encrypted work of Plaintiff HPT without
7 Plaintiff's authority, thus constituting direct circumvention of a technological measure
8 that effectively controlled access to a copyrighted work.

9 16. Whether Defendant Cannata was authorized to circumvent technological measures
10 which controlled access to Plaintiff's copyrighted works.

11 17. Whether Defendant Cannata's alleged circumvention of HPT's technological
12 measures, if any, was willful.

13 18. Whether Defendant Cannata's alleged circumvention of HPT's technological
14 measures, if any, was for private commercial gain.

15 19. Whether Defendant Cannata's alleged circumvention of HPT's technological
16 measures, if any, caused HPT to incur damages.

17 **E. Sixth Claim for Relief – Violation of the Nevada Uniform Trade Secrets Act, NRS**
18 **Chapter 600A ("NTSA")**

19 20. Whether Plaintiff HPT can establish the existence of any trade secret.

20 21. Whether information Defendant Cannata accessed or obtained from Plaintiff HPT
21 constituted a valuable trade secret.

22 22. Whether Defendant Cannata's alleged use, disclosure, or nondisclosure of HPT's trade
23 secrets, if any, constituted a "misappropriation" as defined by the NTSA.

24 23. Whether Defendant Cannata misappropriated HPT's trade secrets, if any, in breach of
25 an express or implied contractual obligation.

26 24. Whether Cannata's misappropriation of HPT's trade secrets, if any, caused HPT to
27 incur damages.

F. Seventh Claim for Relief – Violation of the Illinois Trade Secrets Act, 765 ILCS 1065/1 et seq. (“ITSA”)

25. Whether Plaintiff HPT can establish the existence of any trade secret

26. Whether information Defendant Cannata allegedly accessed or obtained from Plaintiff HPT constituted trade secret(s).

27. Whether Defendant Cannata’s alleged appropriation of HPT’s trade secret(s) was through improper acquisition, disclosure, or use.

28. Whether Cannata’s alleged misappropriation of HPT’s trade secrets, if any, caused HPT to incur damages.

G. Eighth Claim for Relief – Unfair Competition under the Nevada Deceptive Trade Practices Act, NRS Chapter 598 (“NDTPA”)

29. Whether Defendant Cannata’s alleged conduct constitutes a “deceptive trade practice” as defined by NRS §598.0915.

30. Whether Defendant Cannata’s alleged actions were privileged or justified.

31. Whether Defendant Cannata’s alleged conduct deceived the public and violated the public interest.

32. Whether Cannata’s alleged conduct caused HPT to incur damages.

H. Ninth Claim for Relief – Unfair Competition under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq.

33. Whether Defendant Cannata’s alleged conduct by passing off HPT’s credits and keys as authentic products and offerings of HPT, used or employed any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression or omission of any material fact(s) with the intent that others rely on the concealment, suppression, or omissions of such material fact(s). (See 815 ILCS 505/2)

34. Whether Defendant Cannata’s alleged conduct constituted unfair competition. (See

815 ILCS 505/2).

35. Whether Defendant Cannata's alleged actions were privileged or justified.

36. Whether Defendant Cannata's alleged conduct by passing off HPT's credits and keys as authentic products and offerings of HPT deceived the public and violated the public interest.

37. Whether Cannata's alleged conduct caused HPT to incur damages.

I. Eleventh Claim for Relief – Tortious Interference with Prospective Contractual or Economic Relations

38. Whether HPT maintains valid business relationships with vendors, resellers, and/or customers.

39. Whether HPT had a reasonable expectation that its valid business relationships would continue without disruption by any of Defendant Cannata's conduct.

40. Whether Defendant Cannata had knowledge of HPT's business relationships and reasonable expectations regarding the same.

41. Whether Cannata was involved in the solicitation of vendors, customers, or suppliers of HPT to purchase license keys.

42. Whether Cannata was involved with HPT competitor(s) to develop products using HPT's confidential or proprietary information.

43. Whether Cannata was involved with altering or manipulating HPT interfaces to allow such interfaces to be used without the need to purchase authorized credits from HPT.

44. Whether Cannata was involved in the sale or providing to third parties license keys or any HPT software containing licensing.

45. Whether Cannata was involved in providing HPT's confidential or proprietary intellectual property to third parties.

1 46. Whether Cannata interfered with HPT's business relationships with vendors, resellers,
2 and/or customers.

3 47. Whether Defendant Cannata's alleged conduct caused HPT to incur damages.

4 **J. Twelfth Claim for Relief - Conversion**

5 48. Whether Cannata has wrongfully exerted dominion or control over property belonging
6 to HPT inconsistent with his rights (or lack thereof) in such property.

7 49. Whether Cannata has intentionally exerted dominion or control over property
8 belonging to HPT inconsistent with his rights (or lack thereof) in such property.

9 50. Whether Cannata has failed or refused to return property belonging to HPT.

10 51. Whether Cannata has failed to return HPT property belonging to HPT which
11 constituted HPT's confidential and proprietary intellectual property, documents, and
12 information.

13 52. Whether Cannata's dominion or control over HPT's property and failure to return same
14 caused HPT to incur damages.

15 **VI. ISSUES OF LAW TO BE TRIED**

16 None except to the extent any of the foregoing issues of fact is determined to be an issue
17 of law.

18 **VII. EXHIBITS AND DEPOSITIONS**

19 **A. The following exhibits are stipulated into evidence in this case and may be so marked by
20 the clerk:**

21 As to the following additional exhibits, the parties have reached the stipulations stated:

22 The Parties agree (aside from the below exceptions) that exhibits 1 - 12, 24 - 27,
23 and 87 - 91 as identified in the Joint Trial Exhibit List attached hereto as Exhibit 1
24 will be admissible. The Parties reserve all rights to object to the remaining exhibits
25 identified in the Joint Trial Exhibit List and any additional exhibits that may be
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1 designated by the parties.

2 The Parties agree that they may designate additional, demonstrative or summary
3 exhibits in advance of trial.

4 **B. As to the following exhibits, the party against whom the same will be offered objections**
5 **to their admission on the grounds stated:**

6 See Exhibit 1 (Joint Trial Exhibit List).

7 **C. The parties intend to present electronic evidence for purposes of deliberations, including**
8 **videos.**

9 **D. Depositions**

10 (1) Plaintiff HPT may offer the following depositions:

- 11 - Deposition of Chris Piasri taken March 22, 2021
- 12 - Deposition of Bobbie Cannata taken 04/10/2019
- 13 - Deposition of Kevin Sykes-Bonnett taken May 16, 2019
- 14 - Plaintiff will supplement this disclosure in advance of trial.

15 (2) Defendant Cannata may/will offer the following depositions:

- 16 - Deposition of Chris Piasri taken March 22, 2021
- 17 - Deposition of Keith Prociuk taken March 17, 2021
- 18 - Deposition of Kevin Sykes-Bonnett taken September 25, 2018
- 19 - Deposition of Kevin Sykes-Bonnett taken May 16, 2019
- 20 - Defendant will supplement this disclosure in advance of trial.

21 The parties have represented to each other that they expect that their deposed witnesses will be
22 available for trial. If any of those witnesses are not available for trial, each party reserves the right
23 to offer absent witnesses' depositions at trial and agrees to cooperate with the service of trial
24 subpoenas to their witnesses, if necessary.
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E. Objections to Depositions

(1) Defendant Cannata objects to Plaintiff's depositions as follows:

Objection to the extent that any deposition testimony will be used in lieu of actual live testimony.

(2) Plaintiff HPT objects to Defendant's depositions as follows:

Objection to the extent that any deposition testimony will be used in lieu of actual live testimony.

VIII. WITNESSES

The following witnesses may be called by the parties at trial:

A. Plaintiff's witnesses:

Plaintiff may call the following witnesses at trial:

1. Keith Prociuk
2. Kenneth Cannata
3. Kevin Sykes-Bonnett
4. John R. Bone, CPA
5. Elizabeth Groves, Ph.D.
6. Chris Piasri
7. John Martinson

B. Defendant's witnesses:

Defendant may call the following witnesses at trial:

1. Keith Prociuk
2. Chris Piasri
3. Kenneth Cannata
4. Jeremiah Grant, MBA, CVA, CLCS

- 1 5. Mark D. Gianturco, Ph.D.
- 2 6. Bobbie Cannata
- 3 7. Kevin Sykes-Bonnett
- 4 8. John Martinson
- 5 9. Shlomo Sherman
- 6

7 **IX. MOTIONS IN LIMINE TO BE FILED**

8 **A. Plaintiff's Motions:**

- 9 1. To exclude witnesses from the courtroom during the testimony of other witnesses
10 pursuant to Fed. R. Evid. 615.
- 11 2. To exclude and bar any evidence as to the financial status or wealth of any party (as
12 irrelevant and prejudicial).
- 13 3. To exclude and bar any evidence of settlement offers, communications, or negotiations
14 pursuant to Fed. R. Evid. 408.
- 15 4. To exclude and bar any evidence that the Superchips code was created by Ford, or by
16 anyone other than HPT (on the basis of hearsay and direct contradiction of the
17 Superchips technology definition in the subject Joint Development Agreement).
- 18 5. To exclude and bar any evidence or claim that HPT's information or intellectual
19 property was not theirs (on the basis of hearsay; this contention is not supported by any
20 admissible evidence in the record).
- 21 6. To exclude and bar any evidence as to the sales, profitability, or financial performance
22 of HPT (as irrelevant, and any arguable probative value is outweighed by potential
23 prejudice to HPT).
- 24 7. To exclude and bar any evidence as to the conduct or malfeasance of third parties in
25 the creation of fraudulent credits (as irrelevant to HPT's claims seeking damages
26 specifically for the credits generated by Sykes-Bonnett with the key generator that
27 Defendant Cannata provided to him).

- 1 8. To exclude and bar any evidence whatsoever of Sykes-Bonnett conduct.
- 2 9. To exclude and bar any evidence of any other lawsuits, including arguments addressing
- 3 the malfeasance of other persons or entities by engaging in the same or similar conduct
- 4 as that which is alleged against Defendant Cannata (as irrelevant to the claims asserted
- 5 in this matter and whether Defendant is liable for his conduct, and pursuant to Fed. R.
- 6 Evid. 403 would create unfair prejudice, and to confuse the issues and mislead jurors).
- 7 10. To exclude and bar any evidence of Plaintiff HPT's corporate transactions or mergers,
- 8 or that it is not a limited liability company (pursuant to Fed. R. Evid. 401, 403).
- 9 11. To exclude and bar any evidence of negotiations or communications leading up to the
- 10 MIPA, and bar any and all other evidence or argument of matters leading up to or
- 11 outside of the parties' written contracts (as violative of the parol evidence rule).
- 12 12. To exclude and bar any evidence as to whether Defendant Cannata received a pecuniary
- 13 benefit from his misappropriation of HPT property - namely, any claim that he was not
- 14 paid money for same (irrelevant, misleading in that his wife was awarded ownership in
- 15 a competitive business and prejudicial).
- 16 13. To exclude and bar any evidence or argument by Cannata that contends Cannata should
- 17 have been terminated for cause based on misconduct and malfeasance in connection
- 18 with Cannata's prior handling of the books and records of HPT and HPT's taxes but
- 19 was not (as irrelevant).
- 20 14. To exclude and bar any attempt or argument by Defendant Cannata to introduce
- 21 alternate formulas or bases for calculation of Plaintiff's damages beyond that which is
- 22 already in the record or properly introduced by disclosed experts.
- 23 15. To exclude and bar all evidence and argument invoking attempted "rescission" of the
- 24 MIPA and/or to reinstate the Buy-Sell Agreement (as irrelevant to any claim or defense,
- 25 and to confuse the issues and mislead jurors).

26 **B. Defendant's Motions:**

- 27 1. Motion to exclude any reference to any documents, communications, or other evidence

- 1 not produced during discovery.
- 2 2. To exclude witnesses from the courtroom during the testimony of other witnesses
- 3 pursuant to Fed. R. Evid. 615.
- 4 3. Motion to exclude any damages not disclosed pursuant to Fed. R. Civ. P. 26(a).
- 5 4. Motion to exclude any character evidence to prove conduct pursuant to FRE 404.
- 6 5. Motion to preclude any testimony or evidence which is privileged under any applicable
- 7 marital privilege or other privilege.
- 8 6. Motion to disqualify and/or exclude testimony from Plaintiff's proposed expert John
- 9 Boone.
- 10 7. Motion to disqualify and/or exclude testimony from Plaintiff's proposed expert
- 11 Elizabeth Groves.
- 12 8. To the extent Plaintiff's proposed experts are permitted to testify, motion to limit
- 13 testimony from any of Plaintiff's proposed experts to the opinions expressed in their
- 14 respective reports.
- 15 9. Motion to preclude scientific, technical, or other specialized testimony (including, but
- 16 not limited to, code comparison) from Prociuk, Piasri, and any other lay person not
- 17 previously disclosed as an expert witness pursuant to FRE 702.
- 18 10. Motion to preclude any assertion or claim of trade secret regarding publicly available
- 19 information.
- 20 11. Motion to preclude the use of any exhibit or document listed as confidential or highly
- 21 confidential without first de-designating the same.
- 22 12. Motion to exclude any reference to how much HPT's alleged "trade secrets" cost to
- 23 develop as the Court has already concluded that such a damage calculation is improper.
- 24 13. To the extent that Plaintiff does not elect the proper law which applies to its claims,
- 25 motion to require Plaintiff to elect its remedies prior to trial to narrow the issues for the
- 26 Court and jurors to resolve.
- 27 14. Motion to exclude evidence improperly obtained by HPT through Christopher Breton-

Jean.

15. Motion to preclude any assertion or claim for enforcement of the Buy Sell Agreement or evidence of the “book value” of HPT as the Buy Sell Agreement was subsumed and replaced by the Membership Purchase Agreement.

X. TRIAL DATES

The attorneys or parties have met and jointly offer these three trial dates:

-January 23, 2023

-January 30, 2023

-February 6, 2023

It is expressly understood by the undersigned that the Court will set the trial of this matter on one of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the Court’s calendar.

The Parties anticipate they will stipulate to waive their respective requests for a trial by jury in this matter and to proceed with a bench trial instead.

XI. LENGTH OF TRIAL

It is estimated that the trial will take a total of 5-7 days.

APPROVED AS TO FORM AND CONTENT:

FLETCHER & LEE

SHEA LARSEN

/s/ Elizabeth Fletcher, Esq.
ELIZABETH FLETCHER, ESQ.
CECILIA LEE, ESQ.

/s/ Bart Larsen, Esq.
BART LARSEN, ESQ.
Attorney for Defendant Kenneth Cannata

MARKS & KLEIN

/s/ Andrew P. Bleiman, Esq.
ANDREW P. BLEIMAN, ESQ.
Attorneys for Plaintiff HP Tuners, LLC

XII. ACTION BY THE COURT

This case is set for trial on the fixed/stacked calendar on _____. Calendar call will be held on _____.

1 This pretrial order has been approved by the parties to this action as evidenced by their
2 signatures or the signatures of their attorneys hereon, and the order is hereby entered and will
3 govern the trial of this case. This order may not be amended except by court order and based upon
4 the parties' agreement or to prevent manifest injustice.

5 DATED: _____

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7 _____
8 UNITED STATES DISTRICT JUDGE
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EXHIBIT 1**JOINT TRIAL EXHIBIT LIST**

No.	Description			
1	Complaint for Injunctive Relief and Damages with All Attachments – Dkt 1			
2	Cannata Answer to Complaint			
3	HPT First Requests for Admission to Defendant			
4	Cannata 1st Supp Resp to Requests for Admission			
5	Cannata 2nd Supp Responses to Interrogatories			
6	Cannata 2nd Supp Responses to Requests for Production			
7	Cannata Declaration – Dkt 68			
8	Cannata Declaration – Dkt 87			
9	2004-03 HP Tuners Operating Agreement			
10	2004-09-17 Operating Agreement Amendment			
11	2008-03 Buy Sell Agreement			
12	2015-07-20 Buy Sell Agreement-First Amendment			
13	INTENTIONALLY OMITTED			
14	2016-03-23 Email Communications and NDA (Sykes-Bonnett/Martinson/Cannata)			
15	2016-04-08 Fhptuners@yahoo.com/Cannata email communications			
16	2016-04-08Fhptuners@yahoo.com/Cannata email communications			
16A	2016-04-08 email attachment (HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY)			
17	2016-04-10 Fhptuners@yahoo.com/Cannata email communications			
18	2016-04-15 Fhptuners@yahoo.com/Cannata email communications			
19	2016-05-06 Fhptuners@yahoo.com/Cannata email communications			
20	2016-05-10 Fhptuners@yahoo.com/Cannata email communications			
21	2016-05-20 Fhptuners@yahoo.com/Cannata email communications			
22	2016-06-17 Fhptuners@yahoo.com/Cannata email communications (HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY)			
23	2016-10-16Fhptuners@yahoo.com/Cannata email communications			
24	2016-10-20 HPT Membership Interest Purchase			

No.	Description			
	Agreement			
25	2016-10-20 HPT Assignment Agreement			
26	2016-10-20 PPC Membership Interest Purchase Agreement			
27	2016-10-20 PPC Assignment Agreement			
28	2016-11-10 Fhptuners@yahoo.com/Cannata email communications			
29	2016-11-12 Fhptuners@yahoo.com/Cannata email communications			
30	2017-01-09 Fhptuners@yahoo.com/Cannata email communications			
30A	1_9_2017 email attachment AppKey.xls (HIGHLY CONFIDENTIAL - AEO)			
30B	AppKey License Slot tab - HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY			
30C	AppKey Ver 0 Tab - HIGHLY CONFIDENTIAL ATTORNEYS EYES ONLY			
30D	2017-01-09 email attachment Interface Reprogramming (HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY)			
31	E38 ECM_TCM Programming Harness			
32	e38benchtop-2T			
33	Bench Harness drawing			
34	Messages Ken Cannata S5 ken only.xlsx			
35	Call Log Ken Cannata S5 ken only.csv			
36	Text Ken Cannata S7 ken only.xlsx			
37	Call Log Ken Cannata S7 ken only.csv			
38	Cannata-Sykes Bonnett Text Messages - HPT-KC000002-235			
39	Cannata-Sykes Bonnett Text Messages - HPT-KC000236			
40	KSB - KC Additional Text Messages - HPT-KC002563-2583			
41	KSB - KC Additional Text Messages - HPT-KC002584			
42	PayPal Lani Carney - HPT-SET000300-303			
43	Facebook Posts/Messages - HPT-SET000305-310			
44	Facebook Post/Message - HPT-SET000351			
45	Facebook Post/Message - HPT-SET000352			
46	Facebook Post/Message - HPT-SET000354			
47	Screenshot - HPT-SET000373			
48	Screenshot - HPT-SET000374			
49	Screenshot - HPT-SET000375			

No.	Description			
50	Ken Distributions March 1 2016 Oct 20 2016			
51	Payment Records			
52	Subpoena Response Fhptuners – HPT-KC002602-2606			
53	Yahoo Inbox Overview – HPT-KC000613			
54	2017-01-30 Email Communications – SYK0001415			
55	2017-01-30 Syked Tuning Software Shares Purchase Agreement – SYK000365-368			
56	2017-03-15 Syked ECU Buy-Sell Agreement – SYK0002019-2036			
57	2017-10-28 Email Communications (Martinson/Cannata) – Bobbie Cannata Deposition Ex. 66			
58	2018-02-02 Email Communications (Martinson/Cannata) – Bobbie Cannata Deposition Ex. 70			
59	2018-02-23 Email Communications (Martinson/Cannata) – SYK0001701			
60	2017-10-13 – Email Communications (Martinson/Cannata) – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY			
61	Screenshot-Firmware Builder – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – Email Communications			
62	2017-11-08 Email Communications (Martinson/Cannata) – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY			
63	Cable Responses Screen – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY			
64	2017-12-21 – Email Communications (Martinson/Cannata) – HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY			
65	Email Communications (Martinson/Sykes-Bonnett/Cannata) – SYK0004032			
66	Draft Buy Sell - SYK0001927-37			
67	Email Communications (Martinson/Sykes-Bonnett/Cannata) – SYK0004036-62			
68	Email Communications (Martinson/Sykes-Bonnett/Cannata) – SYK0004064-95			
69	16-03-31 March 31, 2016 Balance Sheet – HPT-KC000551-553			
70	December 2015 Book Value – HPT-KC002617-18			
71	Cannata-Sykes Bonnett - Text Messages			
72	2017-11-09 Communication - Syked ECU Tuning to			

No.	Description			
	Cannata – CAN000025			
73	2017-12-21 Communication - Cannata to John Martinson – CAN000066			
74	Arrowfish Rebuttal Report 01082021.pdf			
75	SSVS, Appendix B, Glossary of International Business Terms[3].pdf			
76	HP Tuners v. Kenneth Cannata Expert Report of John Bone 11.20.2020.pdf			
77	Gianturco Expert Report.pdf			
78	Groves_Report_2002083_11-20-2020.pdf			
79	CW_Assembler_Manual HC12_RM_3_22_2021.pdf			
80	P35.pdf			
81	2005-08-31 Superchips HPT Jt Dev Agmt EXECUTION COPY – HPT-KC000382-94			
82	MC9S12DP256B Device User Guide V02.15			
83	S12MSCANV2 Chapter 1 - Freescale's Scalable Controller Area Network - MSCAN Block Guide			
84	Excerpts from code with whitespace			
85	2018-02-02 Email Communications (Martinson/Cannata) – Bobbie Cannata Deposition Ex. 69			
86	2019-03-11 Communication and production – Bobbie Cannata Deposition Ex. 67			
87	Cannata's First Amended Answer to Complaint			
88	Cannata's Second Supplemental Responses to HP Tuners' First Set of Requests for Admissions			
89	Cannata's Third Supplemental Answers to HP Tuners' First Set of Interrogatories			
90	Cannata's First Supplemental Interrogatory Responses with Signed Verification			
91	Cannata's First Supplemental Interrogatory Responses with Signed Verification			
92	INTENTIONALLY OMITTED			
93	INTENTIONALLY OMITTED			
94	INTENTIONALLY OMITTED			
95	INTENTIONALLY OMITTED			
96	INTENTIONALLY OMITTED			
97	INTENTIONALLY OMITTED			
98	INTENTIONALLY OMITTED			
99	INTENTIONALLY OMITTED			
100	INTENTIONALLY OMITTED			

No.	Description			
101	September 16, 2003 NDA – HPT-KC000240-241			
102	Written Consent Form [ECF No. 125 as Exhibit F]			
103	Message chain between Kevin Sykes-Bonnett and Eric Brooks starting on October 22, 2014 – HPT-SET00014-298			
104	January 21, 2016 letter from Kaye Scholer LLP – HPT-KC000502-512			
105	February 6, 2016 Letter from Kolesar & Leatham to Kaye Scholer LLP on behalf of HPT – HPT-KC000543-550			
106	February 25, 2016 Letter from Kolesar & Leatham to Kaye Scholer LLP on behalf of HPT – CAN000638			
107	March 31, 2016 Hilco Valuation Report of HPT - CAN000642			
108	Voicemail regarding Ken Cannata's ability to retain information for personal tuning - CAN000658			
109	List of compatible vehicles for VCM Suite 2.23 from HPT website			
110	Defendants' Trial Brief from Washington Action [ECF No. 223 in Case 3:17-cv-05760)			
111	Email Chain regarding Sykes-Bonnett – HPT-SET000116-129			
112	Email Chain regarding Sykes-Bonnett – HPT-SET000314-321			
113	Email Chain with Gregory Gilvach – HPT-SET001022-1029			
114	HPT's Responses to Cannata's First Set of Interrogatories			
115	HPT's Responses to Cannata's Second Set of Interrogatories			
116	HPT's Responses to Cannata's First Set of Requests for Production			
117	HPT's Responses to Cannata's Second Set of Requests for Production			
118	HPT's 2014 federal income tax return - CAN000636			
119	HPT's 2015 federal income tax return - CAN000636			
120	February 11, 2016 email from Kolesar & Leatham to Kay Scholer LLP - CAN000622-625			
121	May 30, 2016 email from Kay Scholer LLP to Kolesar & Leatham - CAN000654			
122	September 19, 2016 email from Kolesar & Leatham to Kay Scholer LLP with attachments - CAN000677			

No.	Description			
123	September 21, 2016 email from Kay Scholer LLP to Kolesar & Leatham with attachments - CAN000678-679			
124	September 30, 2016 email from Kay Scholer LLP to Kolesar & Leatham with attachments - CAN000682			
125	October 3, 2016 email from Kay Scholer LLP to Kolesar & Leatham with attachments - CAN000683			
126	October 6, 2016 email from Kay Scholer LLP to Kolesar & Leatham with attachments - CAN000695-698			
127	October 21, 2016 email from Kolesar & Leatham to Kay Scholer LLP with attachments - CAN000743			
128	October 21, 2016 email from Kay Scholer LLP to Kolesar & Leatham with attachments - CAN000758			
129	October 27, 2016 email from Kolesar & Leatham to Kay Scholer LLP with attachments - CAN000767-768			
130	October 27, 2016 email from Kolesar & Leatham to Kay Scholer LLP with attachments - CAN000771			
131	October 28, 2016 email from Kolesar & Leatham to Kay Scholer LLP with attachments - CAN000775			
132	October 28, 2016 email from Kolesar & Leatham to Kay Scholer LLP - CAN000790-794			
133	October 28, 2016 email from Kolesar & Leatham to Kay Scholer LLP - CAN000817-823			
134	November 10, 2016 email from Kolesar & Leatham to Kay Scholer LLP - CAN000872-873			
135	December 2, 2016 FedEx delivery confirmation - CAN000890			
136	March 2004 Minutes of the Meeting of the Members of HP Tuners, LLC			
137	HP Tuners, LLC Unit Purchase Agreements - HPT-KC000320-332			
138	HP Tuners, LLC 2008 Profit & Loss - CAN000891-893			
139	Superchips License and Distribution Agreement			
140	Superchips Settlement Agreement			
141	January 5, 2015 HPT Management Meeting Minutes			
142	July 1, 2015 HPT Management Meeting Minutes			
143	August 31 2015 HPT Management Meeting Minutes			
144	January 8, 2016 email chain - HPT-KC000525-527			
145	January 15, 2016 email chain with attachments - HPT-KC000531			
146	Key Person Sponsorship, Marketing, Research &			

No.	Description			
	Development Strategy			
147	2014-2015 Emails between Ken Cannata and Kevin Sykes-Bonnett			
148	Gregor Gilvach emails - HPT-SET000381-507			